

Frederick B. Warder III  
PATTERSON BELKNAP WEBB & TYLER LLP  
1133 Avenue of the Americas  
New York, NY 10036-6710  
Telephone: (212) 336-2000  
Fax: (212) 336-2222  
fbwarder@pbwt.com  
*Attorneys for Defendant Maybelline, LLC*

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

CAROL LEEBOVE, WANDA SANTA AND  
DENISE SANTIAGO individually and on behalf of  
all others similarly situated,

**12 CIV 7146 (JGK)**

Plaintiffs,

v.

MAYBELLINE, LLC, a New York limited liability  
company, d/b/a/ MAYBELLINE NEW YORK

Defendant.

---

**DEFENDANT MAYBELLINE,  
LLC'S ANSWER TO  
PLAINTIFFS' AMENDED  
COMPLAINT**

Defendant Maybelline, LLC ("Maybelline"), by and through its attorneys  
Patterson Belknap Webb & Tyler LLP, respond to the December 21, 2012 Amended Complaint  
of Plaintiffs Carol Leebove, Wanda Santa, and Denise Santiago, individually and on behalf of all  
others similarly situated (collectively, "Plaintiffs"), as follows:

1. Paragraph 1 of the Complaint constitutes plaintiffs' description of the  
action, to which no response is required. To the extent paragraph 1 of the Complaint contains  
factual allegations, Defendant Maybelline denies the allegations, except admits that Maybelline  
and/or its parent and affiliates market SuperStay 10 Stain Gloss and SuperStay 14HR Lipstick  
("Super Stay Products").

2. Defendant Maybelline denies the allegations of paragraph 2.

3. Defendant Maybelline denies the allegations of paragraph 3.
4. Defendant Maybelline denies the allegations of paragraph 4.
5. Defendant Maybelline denies the allegations of paragraph 5.
6. Defendant Maybelline denies the allegations of paragraph 6.
7. Defendant Maybelline denies the allegations of paragraph 7.
8. Defendant Maybelline denies the allegations of paragraph 8.
9. Defendant Maybelline denies the allegations of paragraph 9.
10. Defendant Maybelline denies the allegations of paragraph 10.

11. Defendant Maybelline admits that Maybelline and/or its parent and affiliates sell the Super Stay Products directly to distributors and/or retailers, and that consumers can purchase the Super Stay Products via some online retail sites. Defendant Maybelline denies any remaining factual allegations of paragraph 11.

12. Defendant Maybelline admits that the Super Stay Products can be purchased at some drug stores, super markets, beauty supply stores, and department stores, but denies knowledge or information sufficient to admit or deny the allegations in paragraph 12 regarding online merchant sites and the purchase prices of the Super Stay Products.

13. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 13 because it is unclear what “other lipstick products” are referenced.

14. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 14 because it is unclear what “other Maybelline lipstick products” are referenced.

15. Defendant Maybelline denies the allegations of paragraph 15.

16. Defendant Maybelline denies the allegations of paragraph 16.

17. Defendant Maybelline denies the allegations of paragraph 17.

18. Defendant Maybelline denies the allegations of paragraph 18.

19. Defendant Maybelline denies the allegations of paragraph 19.

20. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 20.

21. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 21.

22. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 22.

23. Defendant Maybelline admits that Maybelline and/or its parent and affiliates manufacture and sell the Super Stay Products, and neither admits nor denies the remaining allegations in paragraph 23 because it is unclear what “distributor” is intended to reference.

24. Defendant Maybelline admits the allegations of paragraph 24.

25. Defendant Maybelline admits the allegations of paragraph 25.

26. Defendant Maybelline neither admits nor denies the allegations of paragraph 26, as they state a legal conclusion to which no response is necessary.

27. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 27.

28. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 28.

29. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 29.

30. Defendant Maybelline neither admits nor denies the allegations of paragraph 30, as they state a legal conclusion to which no response is necessary.

31. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 31.

32. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 32.

33. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 33.

34. Defendant Maybelline denies the allegations of paragraph 34.

35. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 35.

36. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 36.

37. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 37.

38. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 38.

39. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 39.

40. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 40.

41. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 41.

42. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 42.

43. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 43.

44. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 44.

45. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 45.

46. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 46.

47. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 47.

48. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 48.

49. Defendant Maybelline neither admits nor denies the allegations of paragraph 49, as they state a legal conclusion to which no response is necessary.

50. Defendant Maybelline neither admits nor denies the allegations of paragraph 50, as they state a legal conclusion to which no response is necessary.

51. Defendant Maybelline neither admits nor denies the allegations of paragraph 51, as they state a legal conclusion to which no response is necessary.

52. Defendant Maybelline neither admits nor denies the allegations of paragraph 52, as they state a legal conclusion to which no response is necessary.

53. Defendant Maybelline neither admits nor denies the allegations of paragraph 53, as they state a legal conclusion to which no response is necessary.

54. Defendant Maybelline neither admits nor denies the allegations of paragraph 54, as they state a legal conclusion to which no response is necessary.

55. Defendant Maybelline neither admits nor denies the allegations of paragraph 55, as they state a legal conclusion to which no response is necessary.

56. Defendant Maybelline denies the allegations of paragraph 56.

57. Defendant Maybelline denies the allegations of paragraph 57.

58. Defendant Maybelline denies the allegations of paragraph 58.

59. Defendant Maybelline denies the allegations of paragraph 59.

60. Defendant Maybelline denies the allegations of paragraph 60.

61. Defendant Maybelline neither admits nor denies the allegations of paragraph 61, as they state a legal conclusion to which no response is necessary.

62. Defendant Maybelline repeats and re-alleges its responses to paragraphs 1 through 61 as if fully set forth herein.

63. Defendant Maybelline admits that Maybelline and/or its parent and affiliates manufacture and sell the Super Stay Products, and neither admits nor denies the remaining allegations in paragraph 63 because it is unclear what “distributes” is intended to reference.

64. Defendant Maybelline neither admits nor denies the allegations of paragraph 64, as they state a legal conclusion to which no response is necessary.

65. Defendant Maybelline denies the allegations of paragraph 65.

66. Defendant Maybelline denies the allegations of paragraph 66.

67. Defendant Maybelline denies the allegations of paragraph 67.

68. Defendant Maybelline denies the allegations of paragraph 68.

69. Defendant Maybelline denies the allegations of paragraph 69.

70. Defendant Maybelline denies the allegations of paragraph 70.

71. Defendant Maybelline repeats and re-alleges its responses to paragraphs 1 through 70 as if fully set forth herein.

72. Defendant Maybelline neither admits nor denies the allegations of paragraph 72, as they state a legal conclusion to which no response is necessary.

73. Defendant Maybelline neither admits nor denies the allegations of paragraph 73, as they state a legal conclusion to which no response is necessary.

74. Defendant Maybelline neither admits nor denies the allegations of paragraph 74, as they state a legal conclusion to which no response is necessary.

75. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 75.

76. Defendant Maybelline neither admits nor denies the allegations of paragraph 76 referencing “express warranty,” as they state a legal conclusion to which no response is necessary, and denies any remaining factual allegations of paragraph 76.

77. Defendant Maybelline denies the allegations of paragraph 77.

78. Defendant Maybelline denies knowledge or information sufficient to form a belief as to why each plaintiff purchased either of the Super Stay Products, neither admits nor denies the allegations of paragraph 78 referencing a “warranty,” as they state a legal conclusion



to which no response is necessary, and denies any remaining factual allegations of paragraph 78, including without limitation any allegation of falsity.

79. Defendant Maybelline denies the allegations of paragraph 79.

80. Defendant Maybelline repeats and re-alleges its responses to paragraphs 1 through 79 as if fully set forth herein.

81. Defendant Maybelline denies the allegations of paragraph 81.

82. Defendant Maybelline denies the allegations of paragraph 82.

83. Defendant Maybelline admits the allegations of paragraph 83.

84. Defendant Maybelline denies the allegations of paragraph 84.

85. Defendant Maybelline denies the allegations of paragraph 85.

86. Defendant Maybelline denies the allegations of paragraph 86.

87. Defendant Maybelline denies the allegations of paragraph 87.

88. Defendant Maybelline denies the allegations of paragraph 88.

89. Defendant Maybelline denies the allegations of paragraph 89.

90. Defendant Maybelline denies the allegations of paragraph 90.

91. Defendant Maybelline denies the allegations of paragraph 91.

92. Defendant Maybelline repeats and re-alleges its responses to paragraphs 1 through 91 as if fully set forth herein.

93. Defendant Maybelline denies the allegations of paragraph 93.

94. Defendant Maybelline admits that Maybelline and/or its parent and affiliates market, advertise, and promote the sale of SuperStay 14HR Lipstick to consumers in New York. To the extent paragraph 94 states legal conclusions, Defendant Maybelline neither



admits nor denies the allegations, as no response is necessary, and Defendant Maybelline denies any remaining factual allegations of paragraph 94.

95. Defendant Maybelline denies the allegations of paragraph 95.

96. Defendant Maybelline denies the allegations of paragraph 96.

97. Defendant Maybelline denies the allegations of paragraph 97.

98. Defendant Maybelline denies the allegations of paragraph 98.

99. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 99 regarding Santa's purchase of SuperStay 14HR Lipstick, denies knowledge or information regarding what "less expensive lipstick products" are referenced, and denies any remaining factual allegations of paragraph 99.

100. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 100 regarding Santa's purchase of SuperStay 14HR Lipstick, denies knowledge or information regarding what "less expensive lipstick products" are referenced, and denies any remaining factual allegations of paragraph 100.

101. Defendant Maybelline denies the allegations of paragraph 101.

102. Defendant Maybelline denies the allegations of paragraph 102.

103. Defendant Maybelline denies the allegations of paragraph 103.

104. Defendant Maybelline repeats and re-alleges its responses to paragraphs 1 through 103 as if fully set forth herein.

105. Defendant Maybelline denies the allegations of paragraph 105.

106. Defendant Maybelline denies the allegations of paragraph 106.

107. Defendant Maybelline denies the allegations of paragraph 107.

108. Defendant Maybelline denies the allegations of paragraph 108.

109. Defendant Maybelline denies the allegations of paragraph 109.

110. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 110 regarding Santa's purchase of SuperStay 14HR Lipstick, denies knowledge or information regarding what "less expensive lipstick products" are referenced, and denies any remaining factual allegations of paragraph 110.

111. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 111 regarding Santa's purchase of SuperStay 14HR Lipstick, denies knowledge or information regarding what "less expensive lipstick products" are referenced, and denies any remaining factual allegations of paragraph 111.

112. Defendant Maybelline denies the allegations of paragraph 112.

113. Defendant Maybelline denies the allegations of paragraph 113.

114. Defendant Maybelline denies the allegations of paragraph 114.

115. Defendant Maybelline repeats and re-alleges its responses to paragraphs 1 through 114 as if fully set forth herein.

116. Defendant Maybelline neither admits nor denies the allegations of paragraph 116, as they state a legal conclusion to which no response is necessary.

117. Defendant Maybelline neither admits nor denies the allegations of paragraph 117, as they state a legal conclusion to which no response is necessary.

118. Defendant Maybelline neither admits nor denies the allegations of paragraph 118, as they state a legal conclusion to which no response is necessary.

119. Defendant Maybelline denies the allegations of paragraph 119.

120. Defendant Maybelline denies the allegations of paragraph 120.

121. Defendant Maybelline denies the allegations of paragraph 121.

122. Defendant Maybelline denies the allegations of paragraph 122.

123. Defendant Maybelline denies the allegations of paragraph 123.

124. Defendant Maybelline denies the allegations of paragraph 124.

125. Defendant Maybelline denies knowledge or information sufficient to admit or deny the allegations of paragraph 125 regarding Santiago's purchase of SuperStay 14HR Lipstick, denies knowledge or information regarding what "less expensive lipsticks" are referenced, and denies any remaining factual allegations of paragraph 125.

126. Defendant Maybelline denies the allegations of paragraph 126.

127. Defendant Maybelline denies the allegations of paragraph 127.

128. Defendant Maybelline neither admits nor denies the allegations of the Prayer for Relief as there are no facts alleged therein. Defendant Maybelline objects to the relief requested and denies that Plaintiffs are entitled to any relief whatsoever.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to assert their claims.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the First Amendment to the Constitution of the United States and/or by the free speech provisions of the New York, New Jersey, and Michigan state constitutions.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims fail to state a claim upon which relief can be granted.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations or repose.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs failed to exercise reasonable care and diligence to mitigate their alleged damages.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrines of waiver, laches, acquiescence and/or estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' action is not proper for certification as a class action under Rule 23 of the Federal Rules of Civil Procedure.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims for damages, including but not limited to punitive damages, are unconstitutional both facially and as applied to Maybelline pursuant to the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States, and applicable analogous provisions of the New York, New Jersey, and Michigan state constitutions.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred due to Plaintiffs' failure to mitigate damages, or by the failure to mitigate by any member of the purported class.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because any representation or statement alleged to have been made by Maybelline was made in good faith and with a reasonable belief as to its validity and accuracy and with reasonable belief that all of Maybelline's conduct was lawful.

### RESERVATION OF RIGHTS

Maybelline reserves the right to assert additional legal defenses as they become known. Maybelline further specifically reserves all legal defenses that it may have against the purported class and against each member of the purported class.

WHEREFORE, Maybelline respectfully prays that the Amended Complaint be dismissed in its entirety, that the Court finds that this suit cannot be maintained as a class action, that Maybelline be awarded its costs and attorneys' fees, and that the Court order such other and further relief as it deems just and proper.

Dated: New York, New York  
January 14, 2013

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP

By: 

Frederick B. Warder III  
1133 Avenue of the Americas  
New York, NY 10036-6710  
Telephone: (212) 336-2000  
Fax: (212) 336-2222  
fbwarder@pbwt.com  
*Attorneys for Defendant Maybelline, LLC*